

IT 95-28
Tax Type: INCOME TAX
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

```
-----  
DEPARTMENT OF REVENUE      )  
STATE OF ILLINOIS          )  
                             )  
      v.                    )  
                             )    SS#  
XXXXXX                     )  
                             )    Hollis D. Worm  
                             )    Administrative Law Judge  
Taxpayers(s)               )  
-----
```

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as the result of a timely Request for Rehearing by XXXXX (hereinafter referred to as the "taxpayer") to a Notice of Decision issued to her on November 29, 1994. The Notice of Decision upholding the Notice of Deficiency (hereinafter referred to as the "Notice") in its entirety was the result of a default hearing held on October 21, 1994. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayer had failed to file an Illinois Income Tax return for the tax year ending December 31, 1989. The Notice asserted an increased tax liability, as well as penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 for failure to file, failure to pay the entire tax liability by the due date, and failure to pay estimated tax, respectively.

In the taxpayer's Protest she contends that she was not a resident of Illinois during the 1989 tax year. The rehearing in this matter was held on January 12, 1995. The issues to be resolved are:

- (1). Whether the taxpayer was a resident of Illinois during some or

all of the 1989 tax year?

(2). Whether penalties should be assessed pursuant to 35 ILCS 5/1001, 5/1005 and 5/804?

Following the submission of all evidence and a review of the record, it is recommended that the Notice of Deficiency, as reduced by the Technical Support Unit, be upheld.

FINDINGS OF FACT:

1. For the subject taxable year, the taxpayer was an Illinois resident, earned income in the State of Illinois, and did not file an Illinois income tax return. Dept.Ex.No.2

2. The Department of Revenue issued a Notice of Deficiency for the subject taxable year. Dept.Ex.No.2

3. The taxpayer filed a timely Protest. Dept.Ex.No.3

4. In her Protest, the taxpayer alleged that she was not a resident of Illinois for the 1989 tax year and that her federal income tax return reflects a Michigan address for the subject taxable year. Dept.Ex.No.3

5. A copy of the taxpayer's federal income tax return filed for the 1989 tax year obtained from the Internal Revenue Service reflects an Illinois address. Dept.Ex.No.4

6. The State of Michigan was unable to locate a 1989 Michigan income tax return filed by the taxpayer. Dept.Ex.No.5

7. The taxpayer received a pension from the Public School Teachers Pension and Retirement Fund of Chicago in the amount of \$12,430.92 during the subject taxable year, said amount being exempt for taxation by the State of Illinois.

CONCLUSIONS OF LAW: All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a) The taxpayer, as an Illinois resident who earned income in this state, was accordingly subject to Illinois income tax and

was required to timely pay and file a return under the Illinois Income Tax Act. (35 ILCS 5/101 et seq.)

The Notice of Deficiency is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. *Vitale v. Illinois Department of Revenue*, 118 Ill.App.ed 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. *Masini v. Department of Revenue*, 60 Ill.App.3d 11 (1st Dist.1978). The taxpayer has failed to meet that burden in this case.

The taxpayer's contention that she was not a resident of Illinois in 1989, but rather a resident of Michigan, was unsupported by any documentary evidence and was rebutted by the Department's records. A taxpayer cannot overcome the Department's prima facie case merely by denying the accuracy of its assessments. *Smith v. Department of Revenue*, 143 Ill.App.3d 607 (5th Dist.1983); *Puleo v. Department of Revenue*, 117 Ill.App.3d 260 (4th Dist.1983); *Mansini v. Department of Revenue*, 60 Ill.App.3d 11 (1st Dist.1978) The taxpayer must present evidence which is consistent, probable, and identified with its books and records. *Fillichio v. Department of Revenue*, 15 Ill.2d 327 (1958) Accordingly, the taxpayer failed to overcome the Department's prima facie case that no return was filed and no tax was paid.

However, at the rehearing the taxpayer correctly pointed out that the amount she received from the Public School Teachers Pension and Retirement Fund of Chicago in 1989 is exempt from taxation by the State of Illinois. After the rehearing the Department's Technical Support Unit revised the Notice to reflect this exemption.

In addition to asserting a tax deficiency, the Notice proposes penalties pursuant to 35 ILCS 5/1001 and 5/1005 for failure to file a tax return and for failure to pay the entire tax liability by the due date,

respectively. Penalties imposed under the provisions of these statutory sections, however, shall not apply if failure to file or pay the tax at the required time was due to reasonable cause. 35 ILCS 735/3-8.

The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis (Rorabaugh v. United States, 611 F.2d 211 (7th Cir.,1979)) and has generally been interpreted to mean the exercise of ordinary business care and prudence (Dumont Ventilation Company v.Department of Revenue, 99 Ill.App.3d 263 (3rd Dist. 1981)). The burden of proof is upon a taxpayer to show by a preponderance of evidence that it acted in good faith and exercised ordinary business care and prudence in providing for the timely payment of its tax liability.

The taxpayer presented no evidence to support a finding that her failure to file a tax return or to pay tax in a timely fashion was not due to negligence or that it was due to reasonable cause. She therefore failed to meet her burden of proof with respect to the aforementioned penalties.

35 ILCS 5/804 imposes a penalty for underpayment of estimated tax unless the taxpayer was not required to file an Illinois income tax return, or by reason of casualty, disaster, or other unusual circumstances the imposition of such penalty would be against equity and good conscience. 35 ILCS 5/804(e) and (f) The taxpayer was a resident of Illinois during the subject taxable year and therefore she was required to file an Illinois income tax return. Furthermore, the taxpayer presented no evidence to support a finding that her failure to file was due to casualty, disaster, or other unusual circumstances. Therefore this penalty should be assessed.

It is my recommendation that the Notice of Deficiency, as reduced by the findings of the Department's Technical Support Unit (attached), should be upheld.

Hollis D. Worm

Administrative Law Judge

April 26, 1995